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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 17

FRED F. EDWARDS,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee and Respondent.

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA ON BEHALF OF APPELLEE.

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No. 17

Fred F. Edwards,
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The People of the State of California,
Appellee and Respondent.

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA ON BEHALF OF APPELLEE.

THE RESPONSE OF THE ATTORNEY GENERAL TO THE REQUEST OF THE COURT.

The Attorney General of California responds to the request of this Honorable Court made under date of May 5, 1940 that he appear either in person or by his representative to present the views of the State with particular reference to the judicial or administrative interpretation by State authorities of the statute involved, to wit, section 2615 of the Welfare and Institutions Code

of California, making it a misdemeanor for any person, firm or corporation to bring or assist in bringing into the State any indigent person, not a resident of the State, knowing such person to be indigent.

In connection with our response to the Court's request, we present this brief, together with a separate reference Supplement containing such particular information as might assist the Court in the determination of the case.

This brief presents a summary of the administrative and judicial interpretation of the statute by State courts and authorities, as far as the statute can be said to have been interpreted by them, also a summary of the history of the statute and its relation to other statutes and administrative rules pertaining to relief of both resident and non-resident persons, and also an expression of the views of the Attorney General respecting the interpretation and validity of the section.

References are made to the separate Supplement for such detail as the Court may wish to pursue. In the separate Supplement particular information is collected under the headings set forth in the Index to Supplement.

We have set forth as Exhibit No. 1, pp. 1-24 of the Supplement, the full text of the Rubinow statement, prepared by the Bureau of Statistics of the State Relief Administration, on The Problem of Interstate Migration As It Affects the California State Relief Administration, because this statement gives the best factual summary of the problem which we have found, and we believe it will interest and assist the court.

THE ISSUE PRESENTED IN THE CASE.

We agree with the view of counsel for appellant and the statement of the District Attorney of Yuba County in his brief for appellee (Appellee's Brief, page 1) that this case presents the issue of the constitutionality of section 2615 of the Welfare and Institutions Code of the State of California under the Constitution of the United States.

However, for reasons hereinafter set forth, we are of the opinion that the issue cannot be stated as broadly as counsel for appellant and the District Attorney have agreed.

In Appellant's Brief (page 20) it is stated that "• • • the problem here posed resolves itself down to whether the indigent, Duncan, could have been constitutionally barred from California, solely because of his indigency, without being deprived of liberty without due process". In the District Attorney's brief (page 2) he states "we also agree with appellant's restatement of the question as practically amounting to whether or not a State can actually exclude paupers from coming into the State".

We are of the opinion that there is a material distinction between absolute exclusion of indigents from the State and a limited provision designed to prohibit other persons from bringing, or assisting in bringing, indigents into the State, and we will shortly explain our reasons for making this distinction.

THE STATUTE DOES NOT REFLECT THE ACTUAL POLICY OF THE STATE OF CALIFORNIA WITH RESPECT TO INDIGENTS FROM OTHER STATES—CALIFORNIA'S ACTUAL POLICY AND PROBLEM.

Truly, California has been developed as a result of the westward movement of population through the years; it has been the beneficiary of an influx from other parts of the nation of brain, of brawn, of heart, of initiative, of ambition. California is not unmindful of its history, its heritage in this respect, nor is California unaware of the possibilities that still may be realized in the State from this source.

California has never practiced a policy inconsistent with this acknowledgment or based upon any attitude toward citizens of sister states, other than an attitude of warm friendship, especially for those who have little to bring to California except their health, and the character and hope that build cities and states and nations.

No greater proof of this truth could be found than the fact that, although this particular law has been on the statute books of the State in one form or another for more than three quarters of a century (Supp., Ex. 4, p. 43-47), and although it is patterned on similar laws long in force in twenty-seven other states of the Union (53 Harv. L. Rev., p. 1033, n. 15), California has resorted to its provisions, so far as our research has disclosed, only thirteen times in all those years. (Supp., Ex. 6, pp. 58-86.)

We believe that the Court will indulge this diversion from purely legal considerations because a certain just pride may be taken in the fact that, notwithstanding California has borne a heavier share of the abnormal migra-

tion of recent years than any other State (Supp., Ex. 1, pp. 11-16), the problem at times reaching points of grave crisis, and notwithstanding this particular law has been available at all times, California authorities have resorted to it but rarely, and even then only in two counties of the State, besides the county involved in the pending case, counties that were being pressed at the time almost beyond endurance by the exigencies of the problem. (Supp., Ex. 1, pp. 13-14.) (See also District Attorney's Brief for Appellee, p. 16.)

This quite clearly indicates that, prescinding entirely from the availability and validity of a penal statute like section 2615 of the Welfare and Institutions Code, California has in practice preferred to deal with the problem as far as humanly possible by other means more adaptable to the circumstances of individual cases of migratory indigency. (Supp., Ex. 1, pp. 6-8.)

These policies and practices have been based upon the principle that indigence in migration has become a condition, not a theory, and that, however overwhelmed the State or the counties might be, such persons, particularly families, must be accepted and cared for to such extent as might be at all consistent with the welfare of the states and counties and the welfare of the persons involved. (Supp., Ex. 1, pp. 6-8.)

For example, the various counties of the State, administering aid to indigent persons, have always had the power to extend such emergency relief to dependent nonresidents as the respective boards of supervisors deem necessary (Wel. & Inst. Code, sec. 2501; Supp., Ex. 3, p.

38), notwithstanding the residence restrictions otherwise applicable (Wel & Inst. Code secs. 2555, 2556; Supp., Ex. 3, pp. 39-40), and the power to provide transportation for indigents to other counties or states when such indigents will thereby cease to become public charges, or when friends or relatives of such indigents agree to assume the cost and expense of the care and maintenance of such indigents, or when the indigents are legally public charges in the places to which they are so transported. (Wel. & Inst. Code, secs. 206, 2502; Supp., Ex. 3, pp. 37, 38.)

Likewise, the State Relief Administration, which has since 1933 administered relief of hardship and destitution due to unemployment, has modified its rules realistically to extend aid to non-residents when necessary by reason of the unavailability of federal funds for transient migrants. (Supp., Ex. 8, pp. 100, 102.)

It is estimated that between July, 1933 and June, 1940 more than 300,000 persons received aid within one year after they had come to California, i.e., more than 32% of an estimated total migration of 957,000 persons to California during the period, and it is further estimated that the State Relief Administration, operating under the various State Relief Administration statutes, expended for these 300,000 non-residents a total of approximately $13,000,000 during the period, consisting of State Relief Administration funds and funds granted to the State Relief Administration by the Federal Emergency Relief Administration. (Supp., Ex. 1, pp. 12-13.)

These grants from the Federal Emergency Relief Administration, between 1933 and 1936, amounted to $8,978,-

713.18. (Supp., Ex 8, p. 101.) The balance of $4,021,-286.82 represented actual State funds.

The above figures do not include whatever portion of the more than quarter billion dollars (Supp. Ex. 7, pp. 87-93), expended by the counties of the State for indigent aid, general relief, needy aged, needy blind, needy children, under the Welfare and Institutions Code, may have been expended for emergency relief to non-residents, no segregated report for such aid to non-residents being available. Nor do the above figures include a total of $12,418,617 expended directly by the Federal Farm Security in California for aid to needy agricultural migrants during the period 1938 to date. (Supp., Ex. 8, p. 105.)

The total of actual State funds expended by the State Relief Administration during the period 1933 to June, 1940, for the relief of hardship and destitution due to unemployment, was approximately $160,000,000, exclusive of administrative costs. (Supp., Ex. 7, pp. 92-93.) So, we may say that approximately 2½% of State funds expended for relief by the State Emergency Relief Administration during the period was for aid to non-resident, transient indigents.

As the District Attorney of Yuba County has pointed out in his brief (District Attorney's Brief, pp. 16-18), California is second to no state in the Union when it comes to consideration, generosity even, for those persons who stand, unfortunately, in need of relief for any reason, whether unemployment, old age or child helplessness. (See also Supp., Ex. 7, p. 87.)

The rate of relief per case in California, as the District Attorney points out in a table set forth in the ap-

pendix to his brief, runs an average amount per case of $31.35 as compared with the next highest state, $16.08, and as compared with $7.08 in Texas, the state from which the alleged indigent, Duncan, was brought by Edwards, the defendant in the pending case.

Certainly, this does not indicate that California during this period was committed to any actual policy of exclusion from California of indigent persons from other states or that it has attempted to build a "Chinese wall" around the State or set up a "statutory border patrol" as suggested by counsel for appellant. (Appellant's Brief, pp. 14, 15.)

This situation does indicate, however, that California has been faced and is faced with a problem of great importance to its citizens, not only because of the expense involved, but because of those health, moral and crime problems inevitably attendant upon an abnormal influx of persons unable to maintain themselves (Supp., Ex. 1, pp. 4, 5, 20), problems rendered more complex because of the state and county residence requirements ordinarily applicable in the administration of relief. (Supp., Ex. 8, pp. 94-100.)

We have set forth in the Supplement to this brief (Ex. 2, pp. 25-35) a series of Resolutions adopted by the California legislature referring to the seriousness of the migrant problem in California and calling upon the Federal Government to recognize its existence by aid to the State and by means of federal legislation.

WELFARE AND INSTITUTIONS CODE SECTION 2615—HISTORY AND BACKGROUND.

We have set forth in the Supplement to this brief the detail respecting the legislative history of section 2615. (Supp., Ex. 4, pp. 43-47.)

It has been in the Welfare and Institutions Code in its present form since 1937, the year of the adoption of the code. Prior to 1937 the section existed in substantially the same form from 1933, in an act to provide for the aid and relief of indigents. Prior to 1933 the statute existed from 1901, in an earlier act to provide for the maintenance and support of indigents and other persons, in form similar to the present section, except that the misdemeanor was described as the "* * * bringing or leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person, as heretofore mentioned, in any county or city and county in the State of California * * *". (Supp., Ex. 4, p. 45.) Prior to 1901, however, and from 1860, and up to 1937, without express repeal until that year, a section substantially similar to the present section existed as section 18 of an act pertaining to county infirmaries for the relief of the indigent, specifically referring to the bringing of poor or indigent persons into the State from any place without the State, and fixing a penalty in the form of a fine. (Supp., Ex. 4, p. 46.)

We have also set forth in the supplement to this brief the detail respecting the Welfare and Institutions Code of which section 2615 is a part. (Supp., Ex. 3, pp. 36-42.) The Welfare and Institutions Code brought together in

1937 a number of statutes dealing with State institutions and general welfare, and the Code, as set forth in the supplement, gives the plan and rules for institutional and relief work long existing in California, the scheme of which was county responsibility for the general relief of indigent persons, supplemented by State aid to counties for needy children, aged persons and needy blind, and further supplemented by State maintenance of various hospitals and institutions.

In 1933, however, as depression and unemployment persisted alarmingly, California sets up a further and separate system "for the relief of hardship and destitution due to and caused by unemployment" and this system, operating as the State Relief Administration, under statutes separate from the Welfare and Institutions Code, extended direct relief pursuant to these statutes and the rules established thereunder. This State system for the administration of relief, and its relationship to the county system of relief operating under the Welfare and Institutions Code, is described in the Supplement to this brief, Exhibit 8, pp. 97-106.

ADMINISTRATIVE INTERPRETATION OF WELFARE AND INSTITUTIONS CODE SECTION 2615.

No rule specifically interpreting section 2615 exists in any administrative agency of the State, in neither the Department of Social Welfare, which has supervisory powers over the administration of poor relief by public agencies under the Welfare and Institutions Code (Wel. & Inst. Code sec. 113), nor in any of the counties, ad-

ministering aid to indigents under that Code (Wel. & Inst. Code sec. 2500, Supp., Ex. 3, p. 37) nor in the State Relief Administration, administering State relief under the various State Relief Administration statutes. (Supp., Ex. 8, p. 97.)

However, the various counties of the State have adopted certain rules of policy and practice pertinent to the interpretation of the term "indigent person" as used in the Welfare and Institutions Code of which section 2615 is a part.

Also, the State Relief Administration has adopted rules of policy and practice pertinent to the interpretation of the term "hardship and destitution due to and caused by unemployment" as used in the State Relief Administration statutes.

Before referring to these rules, we wish to point out certain statutory provisions pertinent to the interpretation of the term "indigent person" as used in the Welfare and Institutions Code.

Section 2615 is contained in Division IV of the Code entitled, "Indigent Persons". In the supplement to this brief, Ex. 3, pages 36-42, we have set forth the sections of that Division related in any way to section 2615.

Section 2500 provides that every county "shall relieve and support all incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by State hospitals or private institutions".

As already mentioned, counties are given power to give emergency relief to dependent non-residents (Wel. &

Inst. Code sec. 2501) and power to incur expense for transportation of indigents to other counties or states under certain conditions. (Wel. & Inst. Code secs. 206, 2502.)

Section 2505 of the Code provides that "work may be required of an indigent, who is not incapacitated by reason of age, disease or accident, as a condition of relief".

Sections 2550, 2555 and 2556 of the Code provide that in order to be entitled to aid a person must have resided in the State for three years and in the county for one year. Prior to 1931 this requirement was one year in the State and three months in the county. (See Supp., Ex. 8, pp. 94-95.)

Section 2576 of the Code provides that "if any indigent has living within this state a spouse, parent or adult child, and such kindred or any of them, or any group of them has sufficient financial ability to support the indigent, he shall not be entitled to aid under this chapter, except such emergency aid as may be extended hereunder pending a determination of responsibility for his support. * * *" (See Supp., Ex. 8, p. 96.)

Section 2600 of the Code provides that the board of supervisors of any county "may establish its own policies with reference to the amount of property, if any, a person shall be permitted to have while receiving public assistance, to the end that so far as it is possible an applicant for public relief shall be required to apply his own property to his support", and section 2601 provides that the board of supervisors may require transfer of the indigent's property as security.

Under the foregoing section 2600, the various counties of the State have set up ordinances or rules or policies respecting property and we have set these forth for each county of the State in the Supplement to this brief, Ex. 5, pages 48-57. These policies vary in detail and in the amount of property permitted to a relief applicant but an examination of the ordinances and rules will show that they are all based upon the statutory direction that a relief applicant must apply so far as possible his own property to his support, i.e., the applicant must be destitute of means or property to provide for his support and those dependent on him.

The State Relief Administration, operating since 1933 independently of Welfare and Institutions Code provisions and apropriating since then a total of $223,884,767.35 (Supp., Ex. 8, p. 99) for relief of hardship and destitution due to unemployment, and the administration thereof, likewise has established certain rules pursuant to the various statutes. (Supp., Ex. 9, pp. 107-114.)

From the first it adopted a policy of limiting its direct relief to "employable" persons, leaving the unemployables to the counties, upon the theory that "hardship and destitution" was not "due to and caused by unemployment", if the applicant was unemployable, a policy supported by an opinion of the Attorney General in 1935. (See Supp., Ex. 8, p. 100.)

From the first the State Relief Administration also followed its own rule requiring one year residence in the State as a condition of State relief, but this rule was made in view of the fact that between 1933 and 1936 grants from the Federal Emergency Relief Administration made pos-

sible a Federal Transient Service in California to meet the needs of transients, i. e., those not having the one-year residence for State relief. (See Supp., Ex. 8, p. 100.)

On September 6, 1935, the so-called FERA ceased its policy of maintaining the Federal Transient Service and, faced with this emergency, the State Relief Administration adopted various rules to meet the needs of non-resident transients, generally providing for emergency relief from State funds pending verification of their legal residence, and for a short period requiring that recipients of such relief indicate in advance a willingness to return to place of residence when verified. (See Supp., Ex. 8, pp. 101-103.)

In 1940, however, the State legislature placed the first statutory restriction on use of State funds for relief by providing in substance that henceforth all applicants to the State Relief Administration must have resided in the State for three years, and later in 1940 increased this requirement to five years. (See Supp., Ex. 8, p. 103.)

Since 1938 some relief to transients has been available from the Federal Government through the Farm Security Administration, which has applied its funds directly to the relief of "employable persons of agricultural background lacking state residence", this federal agency having expended approximately $12,000,000 for this purpose from 1938 to date. (See Supp., Ex. 8, p. 104.)

We have set forth in the supplement to this brief a summary of the Rules of the State Relief Administration interpreting the term "hardship and destitution" due to and caused by unemployment as used in the State Relief Administration statutes. (Supp., Ex. 9, pp. 107-114.)

Briefly, the basic rule is "lack of resources for support of any member of the family group, including inability of responsible relatives to support". (Supp., Ex. 9, p. 108.) The applicant is expected "to use to its fullest extent any available financial resource of any member of the family for support prior to the receipt of relief from this agency". (Supp., Ex. 9, p. 108.) More particular rules are set forth in the supplement. (Ex. 9, pp. 107-114.)

JUDICIAL INTERPRETATION OF WELFARE AND INSTITUTIONS CODE SECTION 2615.

No court of the State of California has ever specifically interpreted section 2615 except the Superior Court of Yuba County, exercising appellate jurisdiction in the instant case over the inferior Justice's Court of that county, and except certain Justice's Courts in two other counties in the twelve other prosecutions under the section, those prosecutions being referred to hereinafter.

However, the courts of California have interpreted the term "indigent person".

In *Alexander v. Superior Court of Los Angeles County*, 29 Cal. App. (2nd) 538, 84 Pac. 1061 (1938), a mandate proceeding to compel permission for plaintiff to sue without prepayment of jury fees on the theory that he was a pauper, the Court posed the question as follows:

> "May the trial court make an order permitting a party who is not an indigent to prosecute an action before a jury without the prepayment of jury fees?"

The Court then said:

> "This question must be answered in the negative. The law is settled in California that only an indigent

person has a right to prosecute a civil action *in forma pauperis.* (*Gomez v. Superior Court,* 134 Cal. App. 19, 20 (24 Pac. (2d) 859); *Jenkins v. Superior Court,* 98 Cal. App. 729, 730 (277 Pac. 757).) Indigent means destitute of property (Funk & Wagnall's Practical Standard Dictionary (1938) 586); lacking in what is requisite (vol. V, The Oxford English Dictionary (1933) 213). In the present case from petitioner's own testimony it appears that he was not indigent, since he was at the time in receipt of an average monthly income of from $110 to $115 and therefore, applying the rule of law above stated, was not entitled to prosecute his action *in forma pauperis.*"

(Petition for hearing in the Supreme Court denied by the Supreme Court, January 30th, 1939.)

In *Goodall v. Brite,* 11 Cal. App. (2nd) 540, 549, 54 Pac. (2nd) 510, 515 (1936), discussing the class of persons that might be hospitalized in county maintenance hospitals, the Court said:

"If it were necessary we could find another satisfactory reason for the admission of this class of patients to the county hospital. It is admitted that indigent persons are to be admitted when in need of hospitalization. As far as we know the term 'indigent' has not been defined in California in so far as its use in connection with admissions to county hospitals is concerned. It has been defined in other states chiefly in connection with the admission of the indigent insane to hospitals. The term when thus used has been held to include persons with insufficient means to pay for hospitalization after providing for those who legally claim their support. (*Depue v. District Court of Columbia,* 45 App. D.C. 54 (Ann. Cas. 1917E, 414); *In re Hybart,* 119 N.C. 359 (25 S.E.

963); *Massachusetts Gen. Hospital v. Inhabitants of Belmont,* 233 Mass. 190 (124 N.E. 21); *People v. Board of Supervisors,* 121 N.Y. 345 (24 N.E. 830).) Applying this definition to the instant case, we hold that the word 'indigent', when used in connection with admissions to county hospitals, includes an inhabitant of a county who possesses the required qualifications of residence, and who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support."

(Petition for hearing in the Supreme Court denied by the Supreme Court, March 30th, 1936.)

In *San Francisco v. Collins,* 216 Cal. 187, 190, 13 Pac. 2d 912 (1932), involving the validity of a proposed bond issue of the City of San Francisco to make provision for the "indigent sick and dependent poor", as permitted by section 4041.16 of the Political Code (now section 200, Welfare and Institutions Code; Supp., Ex. 3, p. 37) and for "all pauper, incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives and friends, or by their own means, or by state hospitals or other state or private institutions", as required of counties and cities and counties by Stats. 1933, p. 2005 (now section 2500, Wel. & Inst. Code; Supp., Ex. 3, p. 37), the Supreme Court of the State said:

"There can be no question as to the applicability of the first statute, giving power to a county, and the second statute, imposing a duty on the county or city and county, to the existing situation, where large numbers of persons have become indigent through unemployment. The statutes are neither in terms nor spirit limited to the relief of chronic or perma-

> nent paupers, or any other class of poor persons, but extend to every person coming within the terms of the statute dependent upon public assistance for the necessities of life."

Webster's New International Dictionary defines "indigent" as "destitute of property or means of comfortable subsistence; needy; poor; in want; necessitous"; and defines "destitute" as "not possessing the necessities of life; in a condition of extreme want; without possession of resources"; and defines "pauper" as "a person destitute of means except such as are derived from charity; specif. one who receives aid from public poor funds; a very poor person".

The terms being practically interchangeable, we refer to *People v. Selby*, 26 Cal. App. 796, 148 Pac. 807 (1915), a criminal prosecution under section 270 of the Penal Code of California making it a felony for a husband to wilfully abandon and leave his wife "in a destitute condition", in which the court defined the term as used in this criminal statute as follows: (p. 801)

> "The statute upon which the information is based was obviously intended to cover those cases where the husband, without just cause, has willfully abandoned his wife and left her without means or resources and in a condition of absolute want—a condition in which she is unable to procure for herself the ordinary or common necessaries essential to the sustenance of life. This is, indeed, the natural meaning of the word 'destitute' or 'destitution' and the sense in which it is undoubtedly used in the statute. The uncontradicted evidence clearly shows that the wife in this case was not left in a 'destitute condition' by the defendant. Immediately upon the separation between

herself and husband taking place, she was received into the family of a relative and there taken care of. Moreover, she had credit at a general merchandising store, where, according to the owner of the store, she was privileged to obtain merchandise on her own credit.

She did not, nor did any other witness, testify that, after the separation, she was at any time deprived of the necessaries of life. The only proof upon that matter was that the defendant did not provide those necessaries. While it was, of course, his duty to furnish her with such necessaries, it was no crime for him not to do so if she was actually in want of them even though he might have abandoned her within the meaning of the statute. (See State v. Thornton, 232 Mo. 298, (32 L.R.A. (N.S.) 841, 844, 134 S.W. 519).)"

In *People v. Yates*, 114 Cal. App. (Supp.) 782, 789, a prosecution under section 270 of the Penal Code of California of a father for having "wilfully omitted to furnish necessary food, clothing, shelter or medical attention or other remedial care for his child", the Court said: (p. 789)

"Appellant attacks the constitutionality of this statute on the ground that it is uncertain and defines as a crime acts which can only rest upon conjecture and hypothesis. The same provision applies to all children, whether born or unborn. If it is uncertain as to one it must be as to the other. The language requiring the furnishing of 'necessary food, clothing, shelter or medical attendance' has been in this section since it was first enacted in 1872, and it seems never to have been attached for uncertainty, nor do we find any fatal uncertainty in it. In the nature of things no specific and precise rule can be made on the subject. The statute points out certain kinds of

> care and requires the father to furnish them as necessary. The necessity is capable of ascertainment by proof to be submitted to the jury. In Ex parte Daniels (1920), 183 Cal. 636, 646 (21 A.L.R. 1172, 192 Pac. 442), the Supreme Court held that a statute making it unlawful to drive a motor vehicle at an unreasonable or unsafe speed was not void for uncertainty. The provisions of section 270 are at least as certain as the statute there upheld."

In the Supplement to this brief, Ex. 13, pp. 151-6, we have collected authorities construing the term "indigent" and we are of the opinion that the term has a well known and accepted meaning as a person who is destitute of property or means of comfortable subsistence, for himself and those whom he is legally obligated to support, and that it would be impractical to further define the term in a statute designed to deal with such a condition.

Going a bit further under the head of judicial interpretation in California, we refer to *State v. S.S. Constitution*, 42 Cal. 578, 10 Am. Rep. 303 (1872).

This case involved a State statute requiring a report to the State Commissioner of Emigrants of every passenger arriving from foreign ports and requiring a bond to be given for every such passenger to secure the state and counties against expense for the relief of such person.

In this case the master of the vessel failed and refused to provide such a bond, claiming that the persons involved were persons in the prime of life, in the full possession of their faculties, perfectly sound in body and mind, neither paupers, vagabonds or criminals, and in all respects competent to earn a livelihood.

The Court held that the statute was not a proper exercise of any police power of the state because its requirements applied to all foreign passengers, without regard to whether they were such as could reasonably be expected to become paupers, vagabonds, criminals, sick or infirm, and that this was too broad and not in a proximate degree germane to the subject.

However, the Court conceded the power of the State to "provide police and sanitary regulations to prevent the people of this state from becoming chargeable with the support and maintenance of persons imported from foreign countries, who either then were, or were soon after, to become a public charge", and said: (page 584)

> "* * * If it were conceded that this was the real purpose of the statute, and that its provisions are reasonably adapted, and were intended to secure this result, and this only, there would be an end to the argument; for in all the numerous adjudications which have been had in respect to the power of the several States to interfere with commerce under the clauses of the Constitution above referred to, it has never been doubted that a State has the power, by proper police and sanitary regulations, to exclude from its limits paupers, vagabonds, and criminals, or sick, diseased, infirm, and disabled persons, who were liable to become a public charge, or to admit them only on such terms as would prevent the State from being burdened with their support. To surrender this power would be to abandon one of the highest prerogatives of local self-government, one of the chief functions of which is to preserve the public health and repress crime. * * *"

The Court then considered the question, assuming the statute to be no police or sanitary regulation, whether

it could be, nevertheless, considered a valid enactment under the rule that, in the absence of congressional action in the field of commerce, a state might adopt regulations of a local nature, but the Court held that the statute was not local in character and that, therefore, the statute was not sustainable upon that theory.

In *Ex parte Ah Fook*, 49 Cal. 402 (1874) the Court considered a statute authorizing the State Commissioner of Immigration to ascertain whether there were among the passengers of vessels arriving from a foreign port persons who were "lunatic, idiotic, deaf, dumb, crippled, infirm, or paupers likely to become a public charge, or convicted criminals, or lewd or debauched women" and authorizing the Commissioner to either exclude such persons or require a bond from the owner or agent of the vessel to secure the State and counties against any expense resulting from the infirmities or vices of such persons.

The case involved certain Chinese passengers excluded by the Commissioner upon finding them to be lewd and debauched women and the Court held that the statute was not in contravention of the United States-Chinese Treaty of 1868, containing a most favored nation clause covering visiting Chinese subjects, because as the Court pointed out: (page 405)

> "* * * Otherwise, we should be prohibited from excluding criminals or paupers—a power recognized by all the writers as existing in every independent State. We can but think, that to give to the general language of the treaty a construction which would deprive both the State and United States Government

> of this power of self-protection would be a departure from the evident meaning and purpose of the high contracting parties."

The Court further held that the power of the Commissioner to determine whether particular individuals come within the provisions of the statute was not a denial of due process under the Fourteenth Amendment because the operation of health or quarantine laws must necessarily be prompt and summary and statutes clothing officers with such powers have never been held to be unconstitutional.

Under the head of judicial interpretation we wish to refer to the thirteen actual prosecutions in California under section 2615 of the Code, pointing out to the Court that all of these cases were disposed of by the justices of the peace presiding over inferior county courts, and that none of them was ever reviewed, except the instant Edwards case, by any California court having appellate jurisdiction over these justice courts.

These prosecutions, instituted by representatives of the local county welfare departments, may also be considered as administrative interpretations of the section, at least by the three minor officials involved.

However, so far as we have been able to determine, these minor officials were acting on their own initiative, or that of the local welfare department, rather than pursuant to any general State rule or policy.

We have set forth in the supplement to this brief the docket and case histories of these cases, with as much detail and completeness as possible. (Supp., Ex. 6, pp. 58-86.)

There have been only thirteen actual prosecutions under the section, including the pending case, all of them within three of the fifty-eight counties in the State, Yuba (1), Kern (1), Tulare (11), and all during the period October 30, 1939 to February 7, 1940.

This was a time of near crisis in the migrant problem, particularly for these counties. (Supp., Ex. 1, pp. 13-14.)

In all of the cases prosecuted, the complaint was signed by a representative of the local county welfare department, except the instant case, in which it was signed by a representative of the State Controller's Office.

Of the thirteen cases in which complaints were signed, four (*Kelly* case, Supp., Ex. 6, p. 79; *Woodward* case, Supp., Ex. 6, p. 64; *Ramos* case, Supp., Ex. 6, p. 68, and *Crisp* case, Supp., Ex. 6, p. 69) never reached the stage of service of warrant and arrest, and in one (*Rankin-Morris* case, Supp., Ex. 6, p. 75) a plea of not guilty was entered but no further action taken.

The remaining eight cases were all disposed of upon a plea of guilty by the defendant, a six-months sentence imposed but suspended, generally upon certain conditions. (*Edwards* (instant) case—no condition; *George* case, Supp., Ex. 6, p. 59—reimbursement of county for expense of returning indigents; *Vaughn-Henson* case, Supp., Ex. 6, p. 80—defendants to leave county and State; *Ochoa* case, *Duncan* case, *Anderson* cases, Supp., Ex. 6, pp. 83, 80, 74—defendants to take the indigents back to origin; *Cook* case, *Jones* case, Supp., Ex. 6, pp. 65, 70—defendants to leave State and the indigents back to origin.)

Of the thirteen cases, five (*Edwards* (instant) case, *George* case, *Crisp* case, *Cook* case and *Ochoa* case) did not involve any family relationship requiring support of the indigents by the defendant; three (*Anderson* case, *Duncan* case and *Kelly* case) may have involved such relationship but fact is not definitely ascertainable and the *Kelly* case never reached the stage of service of warrant; two (*Ramos* case and *Woodward* case) did involve such relationship between the defendant and the indigents but never reached the stage of service of warrant; two (*Rankin-Morris* case and *Jones-Ensminger* case) involved such relationship between one of the defendants and the indigents; one (*Vaughn-Henson* case) involved such relationship between each of the defendants to some of the indigents.

Of the thirteen cases, three (*Edwards* (instant) case, *George* case, *Cook* case) involved the receipt of aid prior to entry into the State and the remaining ten may have involved such a situation but the fact is not definitely ascertainable.

Of the thirteen cases, all involved application for aid upon or shortly after arrival in California. (See for further particulars, Supp., Ex. 6, pp. 58.)

CONCLUSIONS RE INTERPRETATION OF WELFARE AND INSTITUTIONS CODE SECTION 2615.

Having referred to all available data in the nature of administrative or judicial interpretation in California, we wish to set forth what we believe to be the conclusions

to be drawn therefrom with respect to the interpretation of the section.

1. The term "indigent person", as used in the statute, means a person destitute of property or means of comfortable subsistence, without the necessities of life or resources therefor, for himself and those to whom he owes a legal duty of support, and, therefore, in need of public aid.

The term excludes those who have resources for the decent support of themselves and their families, either funds, or property that can readily be resorted to, or available credit, or relatives legally bound to support them and able and willing to do so, or friends able and willing to do so.

The term is not limited to persons who are physically or mentally incapacitated but is broad enough to include persons who from any cause are in a destitute condition.

This we believe to be the settled, well understood and accepted meaning of the term in California, as disclosed by administrative and judicial authority. Further, this is in accord with the settled meaning of the term in common usage and under the authorities in other jurisdictions, many of which we have collected in the Supplement to this brief. (Supp., Ex. 13, pp. 151-6.)

2. The statute contemplates that the condition of indigency shall exist at the time the person is brought into the State and is not in terms, or within reasonable construction, pointed to a class of persons who merely may become, or who may be said to be likely to become, indigent persons at some future time, unless the circum-

stances are such as to reasonably support a finding of present indigency.

3. *The statute does not purport to exclude indigent persons from the State.* Rather, the offense consists in the act of bringing, or assisting in bringing non-resident indigents into the State with knowledge of indigency.

4. A reasonable construction of the statute would, therefore, be that a person, though indigent himself, could not be guilty of the offense of bringing, or assisting in bringing, other indigent persons into the State, *if such other indigents were persons whom he was under a legal obligation to support, e.g., parent, wife or children.*

Any other construction, notwithstanding the broad terms of the statute, would be tantamount to excluding the accused solely by reason of his indigency, an offense unknown in the State and deliberately avoided by the legislature in the framing of the statute. For, within the fair meaning of the law of California and of all states which impose mutual obligations of support upon parents, children and spouses (see for support laws of California, Supp., Ex. 8, p. 96), they are one in this respect and the entry of an indigent father with his indigent wife and children is one and inseparable from the entry of the father, himself, and we cannot reasonably assume that the legislature, in framing this statute, contemplated such a result in view of its definition of the offense, *not* as the entry into the State of non-resident indigent persons, but as the bringing, or assisting in bringing, of non-resident indigent persons into the State. In such a case the indigent father does not, in our opin-

ion, "bring or assist in bringing" indigent persons into the State within the meaning of this statute.

This approach to the construction of section 2615 has strikingly similar precedent in *Church of the Holy Trinity v. United States,* 143 U.S. 457, 459, 465, 472 (1891), wherein the Supreme Court of the United States, after a most thorough discussion, held that a federal statute, which prohibited the prepayment of transportation for, or the assisting or encouraging in any way of, the importation or migration of any alien or foreigner into the United States under contract or agreement to perform labor or service of any kind therein, should not be applied to a contract between a religious society and an alien religious minister whereunder the latter was to enter the United States and perform service for the society at New York as its rector and pastor. The Court pointed out that, notwithstanding the broad terms of the statute, the legislature should not be assumed to have intended such a result when framing a statute really designed to stay the influx of certain kinds of cheap unskilled labor into the United States.

5. It follows that the offense of bringing, or assisting in bringing, a non-resident indigent into the State would be committed, within the meaning of the statute, only when the accused brought, or assisted in bringing, into the State, a non-resident indigent person to whom he owed no legal duty of support and as to whom he was a mere volunteer, whatever his motives may have been.

We believe this construction of the statute is related to the mischief which the legislature must have had in mind in the framing of this statute, i.e., the more or less

promotional bringing into the State of non-resident indigent persons.

An example of such situation is the operation of labor contractors, private employment services and other recruiting agencies, referred to in the survey filed by the Governor of California at the Hearings before the Select Committee of the House of Representatives, San Francisco, September 24-25, 1940, Part 6, pp. 2232, 2243, as well as other cases of bringing, or assisting in bringing, of non-resident indigents into the State, where the relationship between the accused and the indigents is merely that of volunteer, as in the case now before this Court.

This statute does not involve any particularly shocking aberration on the part of the legislature of California and, even from a very practical aspect, the bringing, or assisting in bringing into the State of a person known to be destitute by one owing no duty of support to such person is, not only an offense against the State under the terms of this statute, but may be, and most often is, a wrong against the indigent person under prevailing conditions which make it almost impossible for one to become quickly adjusted in a new community.

On the one hand, it would seem that one, who assumes the responsibility of bringing or assisting in bringing into the State a non-resident and unrelated indigent person, should extend his solicitude for such person to the point of real effectiveness by providing such means of support as would at least remove that person from the basic indigency and destitution contemplated by the statute.

On the other hand, there is no offense committed against any California statute by the entry of an indigent person,

himself, or, as we believe, with his family, into California, however inadvisable that may be in particular cases both from the viewpoint of California's welfare and the welfare of the indigent himself.

If it be said that it is physically impossible for an indigent person, alone or with his family, to realize the ambition of coming to California without aid from others, then, surely, we must see, as the indigent person must also see, that aid which begins and ends with transportation to California is in reality no aid at all, and that the true alternative lies either in the patient awaiting of such aid as would be more than nominal, aid that would remove him from a condition of actual indigency upon entry into California, or in the patient accumulation by himself of such minimum resources as would remove him from such condition and make it possible for him, not only to enter California, as he has the legal right to do, but to care for himself for a reasonable time during the difficult period of adjustment in a new community.

The practical effect of this statute, therefore, even if consistently enforced, would be, not the exclusion of indigent persons from California to any appreciable extent or in any true sense of the term, but merely the punishment of those who knowingly go out of their way to impose upon the State and its counties and also upon the indigent person, without doing anything themselves to really aid the indigent.

6. Lastly, the statute in terms requires that the accused shall have had "knowledge" of the indigency. Some similar statutes in the other states require an intent to make the indigent person a charge upon the state or

county but we are of the opinion that this difference is unimportant because "knowledge" of the "indigency" embraces a presumed further knowledge that the indigent person must necessarily resort to public aid, and a general, if not specific, intent, that such result will follow.

At this point we wish to refer to a case cited by counsel for appellant in his brief at page 20, *De Jonge v. Oregon*, 299 U.S. 353, 357, 362 (1936), in support of his statement that it is beyond the power of the State to make a crime of assisting another in the exercise of his constitutional rights.

That case involved the reversal by this court of the conviction of the defendant under one of the sections of the Criminal Syndicalism Law of Oregon for having assisted at a meeting called by the Communist Party, which was a public, orderly meeting, for a lawful purpose and at which meeting neither criminal syndicalism nor any doctrine of incitement to violence was taught or advocated. The ruling of this court was upon the ground that, the meeting itself being nothing more than the lawful exercise of the right of free speech, defendant could not be guilty of any offense for assisting in the conduct of the meeting.

There is nothing in that opinion inconsistent with the power of a state to define as an offense the act of bringing, or assisting in bringing, an indigent person into the state when the state in the exercise of its police power reasonably determines that such act of bringing or assisting in bringing an indigent person into the state is, in itself, and apart from the possible right of such indigent to enter the state himself, related to a problem affecting the health,

morals of general welfare of the state, i.e., the stimulation of an influx into the state of destitute persons without necessity therefor and contrary to the natural course of migration to the state.

RESTATEMENT OF THE ISSUE PRESENTED TO THE COURT.

Having stated our conclusions concerning the interpretation of section 2615, we restate what we believe to be the issue presented to the Court.

The issue is, not the power of the State to exclude indigent persons, for the legislature of California has not attempted to exercise such power in this statute, but is merely the power of the State to define as an offense the act of bringing, or assisting in bringing, indigent persons into the State with knowledge of such indigency and without such relationship toward the indigents as would impose the legal bond of care and support.

This, in turn, suggests the more fundamental issue of whether the State has the power to recognize the effect of an influx of destitute or indigent persons into the State upon the health, morals and general welfare of the State and to determine how far it will legislate, short of absolute exclusion of indigents, in order to alleviate to some extent the burden of indigency in the State.

Here, the State has seen fit merely to prohibit others from bringing, or assisting in bringing, indigent, destitute persons into the State, wilfully and without legal necessity therefor, the legislature apparently having determined that

such act, in itself, is related to the problem at hand, and that its prohibition is an appropriate means of controlling the problem and the limit to which the legislature deems it wise to go.

Evidently, this was done upon the theory that, although the legislature was willing to allow immigration of indigent persons into the State to follow a normal course, it was desirous of preventing, in the interest of the welfare of the state, such an artificial promotion and stimulation of the influx as would increase the migration and render its effect more serious and acute.

THE CONSTITUTIONALITY OF SECTION 2615.

(a) Reference to Authority in Point.

Before discussing the various specifications of unconstitutionality, upon which appellant relies, we wish to refer to such authority as we have found to be either precisely or closely in point with the pending case.

We have set forth in the Supplement to this brief, Supp., Ex. 10, pp. 115-120, a collection of cases from other jurisdictions which involved statutes identical with or substantially the same as section 2615.

The courts of Connecticut, New York, Vermont, Michigan, New Hampshire and Ohio, considering similar statutes in cases involving the bringing of indigents from outside the State, have upheld convictions (Conn., New York, Vermont, New Hampshire) or have reversed convictions upon grounds other than unconstitutionality. (Ohio, Michigan.)

See:

Barkhamsted v. Parsons, 3 Conn. 1 (1819) (Supp. Ex. 10, p. 115);

Windfield v. Mapes, 4 Denio 571; 17 N. Y. C. L. 676 (1847) (Supp. Ex. 10, p. 116);

Dover v. Wheeler, 51 Vt. 160 (1878) (Supp. Ex. 10, p. 116);

Poor v. Nelson, 42 N. W. 797 (Mich., 1889) (Supp. Ex. 10, p. 117);

State v. Cornish, 66 N. H. 329; 21 Atl. 180 (1890), (Supp. Ex. 10, p. 117);

Risner v. The State, 55 Ohio App. 151; 9 N. E. (2nd) 151 (1937), (Supp., Ex. 10, p. 118).

In New York, Illinois and Colorado the courts have upheld convictions under similar statutes in cases involving transportation from one county to another within the state.

See:

Thomas v. Ross & Shaw, 8 Wend. 671; 11 N. Y. C. L. 509 (1832), (Supp. Ex. 10, p. 115);

Williams v. Franklin, 39 Ill. 21 (1865), (Supp. Ex. 10, p 116);

Commissioner v. Law, 3 Colo. App. 328; 33 Pac. 143 (1893), (Supp. Ex. 10, p. 118).

In the *Risner* case, supra, Ohio (1937), the case turned upon the sufficiency of the evidence to show that the person brought from Kentucky to Ohio was a "poor or indigent person" within the meaning of the statute, and the court defined this term as follows:

"Applying these definitions to the provisions of section 2555, General Code, it is clear that the words

> 'poor or indigent' modifying the word 'person' are either synonymous as indicating those who are entirely destitute and helpless and therefore dependent on public charity, or that the word 'poor' is used in the technical sense as indicating one who is actually receiving public aid, and the word 'indigent' is used in the nontechnical sense as meaning one destitute and a proper subject for public aid."

We have found no case in which a statute similar to section 2615 has been held to be unconstitutional.

We have also set forth in the Supplement to this brief a collection of cases based on statutes authorizing removal of poor or indigent persons from one county to another or from one state to another. (Supp., Ex. 11, pp. 121-124.)

The courts of Minnesota, Illinois, Connecticut and Pennsylvania have upheld statutes providing for the removal of poor or indigent persons from one county to another on the basis of settlement or residence, and North Dakota has ruled against removal to a point outside the state upon the ground that the particular statute only provided for removal within the state.

See:

Lovell v. Seeback, 45 Minn. 465; 48 N. W. 23 (1891), (Supp., Ex. 11, p. 121);

Town of Bristol v. Town of Fox, 159 Ill. 500; 42 N. E. 887 (1896), (Supp., Ex. 11, p. 122);

Harrison v. Gilbert, 71 Conn. 724; 43 Atl. 190 (1899), (Supp., Ex. 11, p. 123);

In re Barnes, 119 Pa. (Sup. Ct.) 553; 18 Atl. 718 (1935), (Supp., Ex. 11, p. 123);

Anderson v. Miller, 120 Pa. (Sup. Ct.) 463; 182 Atl. 742 (1936), (Supp., Ex. 11, p. 124);

Hillborn v. Briggs, 226 N. W. 737 (N. D. 1929), (Supp., Ex. 11, p. 123);

Overseers of Gilpin v. Overseers of Park, 11 Atl. 791 (Pa. 1888), (Supp., Ex. 11, p. 121).

In addition to the above cases, we wish to invite the Court's attention to the recent case, *In re Chirillo*, 283 N. Y. 417, 28 N. E. (2nd) 895 (1940), (Supp., Ex. 11, pp. 124-133).

Chirillo, a naturalized citizen of the United States, lived in Ohio but moved to New York. A New York statute provided that a person, who was cared for at the expense of the state, or a public welfare district, and who belonged to or had friends willing to support or aid in supporting him in any other state or county, might be removed by the State Department of Social Welfare to such state or county, provided that in the judgment of the department the interest of the state and the welfare of such person will be thereby promoted. If the person refuses to go, the Department may apply to the county judge for an order of removal to the state legally responsible for and willing to support him. (Public Welfare Law of New York, Sec. 71.)

The point upon which the decision in the above case turned was whether the appeal to the appellate court presented solely the question of the constitutionality of the statute.

A majority of the New York Court of Appeals took the view that the question of constitutionality could not

be considered on appeal because that question depended upon the construction of the statute, which question was raised by appellant, and that the Court of Appeals was, therefore, without jurisdiction to act at all, and dismissal of the appeal was ordered.

This view of the majority four justices prevented an express determination by the New York Court of Appeals of the constitutionality of the New York statute, but a minority of three justices took the view that the Court of Appeals did have jurisdiction to determine the constitutionality of the statute, discussed the constitutional question exhaustively, and held that the statute was valid notwithstanding appellant's contention that it violated the due process and equal protection clauses of the Fourteenth Amendment, the commerce clause, the privileges and immunities clause of Article IV, Section 2, and the privileges and immunities clause of the Fourteenth Amendment.

This dissenting opinion, which does not, like so many dissents, oppose the majority opinion but discusses points not considered at all by the majority, is so related to the pending question that we have set forth for the convenience of this court considerable quotation from the opinion, Supplement Exhibit 11, p. 124-133.

(b) Section 2615 Does Not Contravene the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The contention that this statute contravenes the due process clause of the Fourteenth Amendment cannot be sustained, unless it can be said that the statute has no relation to the public welfare of the people of the State.

In *Nebbia v. New York*, 291 U. S. 502, 525 (1933) this Court said:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

The fact that legislation of this kind has been long in force upon the statute books of many states and assumed to be an appropriate method of dealing with the problem of migratory indigency is in itself strong proof of its reasonableness as an exercise of the police power of a state.

In *Coler v. Corn Exchange Bank*, 250 N. Y. 136; 164 N. E. 882 (1928), Justice Cardozo, upholding a statutory seizure of property of a husband absconding from a wife and child likely to become paupers, said:

> "The Fourteenth Amendment, itself a historical product, did not destroy history for the states and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it. *Jackman v. Rosenbaum Co.*, 260 U. S. 22, 31; 43 Sup. Ct. 9.
>
> "This background of tradition gives the setting of the statute and the method of approach when today its validity is challenged."

The influx of transient indigent persons into the state not only taxes the resources of the citizens of the state in order to meet an actual condition, which from every instinct of humanity must to some degree be met, but it affects housing, moral, health and working conditions within the state.

> "Rejected applicants continue to be a part of the economic structure of the county or state in which they are present and therefore affect the social and economic conditions in the state."

See:

Rubinow Survey, Supp. Ex. 1, p. 20;

Resolutions of the Legislature, Supp. Ex. 2, pp. 25-35.

We have already pointed out that the act of wilfully bringing, or assisting in bringing, indigent persons into the State, without any bond of legal support, is, in itself, an act amounting to the promotion and stimulation of an influx of indigency, over and beyond the natural course of migration, an act, in itself, related to the social and economic problem of the State, and, therefore, a proper subject for legislative prohibition in the exercise of the State's police power.

(c) Section 2615 Does Not Contravene the Commerce Clause of the Constitution of the United States.

Upon this point we invite the attention of the Court to the constantly reiterated statement of this Court, in cases involving state statutes claimed to contravene the commerce clause, that the states have the power to exclude paupers, and those likely to become such, in the exercise of the police power and for the purpose of defending

themselves from the conditions that result from an influx of such persons into the state.

For the convenience of this Court we have collected excerpts from these cases in the Supplement to this brief, Supp. Ex. 13, p. 134. These cases are:

Mayor of New York v. Miln, 11 Peters 102, 141-2, 147-8, 153b, 153, 153n, 155; 36 U. S. 71 (1837) (Supp. Ex. 12, p. 134);

Prigg v. Pennsylvania, 16 Peters 539, 41 U. S. 536, 624 (1842) (Supp. Ex. 12, p. 140);

License Cases—Thurlow v. Massachusetts, 5 Howard 504, 46 U. S. 590, 596 (1847) (Supp. Ex. 12, p. 141);

Passenger Cases—Smith v. Turner and Morris v. Boston, 7 Howard 283; 48 U. S. 300, 424-426 (1849), (Supp. Ex. 12, p. 141);

Henderson v. The Mayor of New York, 92 U. S. 259, 275 (1875) (Supp. Ex. 12, p. 144);

Chy Lung v. Freeman, 92 U. S. 275, 280 (1875), (Supp. Ex. 12, p. 145);

Railroad Company v. Husen, 95 U. S. 465, 470, 472-3 (1877), (Supp. Ex. 12, p. 146);

Plumley v. Massachusetts, 155 U. S. 461, 478 (1894), (Supp. Ex. 12, p. 147);

Missouri, Kansas & Texas R. R. Co. v. Haber, 169 U. S. 613 (1897), (Supp. Ex. 12, p. 147);

See also:

Japanese Immigrant Case—Kaoru Yamamata v. Fisher, 189 U. S. 86, 97 (1902) (Exclusions by federal statute within police power clause of treaty). (Supp. Ex. 12, p. 148.)

See also:

Sweeney v. State Board of Public Assistance, 36 Fed. Supp. 171 (Dist. Ct., Pa. 1940) (Supp. Ex. 12, p. 149).

It is true that some of these cases struck down the particular state statutes involved upon the ground that they were not limited to the exclusion or control of paupers, and like persons, but applied to all immigrants in such manner as to indicate that they were not true police measures. (*Prigg, Passenger, Henderson, Chy Lung* and *Husen* cases.)

It is also true that in other of these cases the reference to paupers, although ir support of the principle of the decision, was dicta in view of the particular facts before the Court. (*License, Plumley, Haber* cases.)

In all of them, however, the Court stressed the power of a state to protect itself from an influx of persons without means of supporting themselves; the heavy charge of maintaining such persons; the likelihood of health, moral and other injurious conditions resulting therefrom; the similarity of so-called pauper laws to quarantine laws; the power of the state to determine what class of persons may injuriously affect the state or bring the burden of a numerous pauper population; and the power of the state to enact necessary statutes limited to these objects.

The statute before the Court in the pending case is so well within the dicta of the above cases that it is not necessary for this Court to apply such dicta to its full extent, because: (1) Section 2615 does not exclude indi-

gents at all; (2) it merely prohibits acts of other persons which tend to promote and stimulate the influx of paupers, which, according to the above dicta, could be absolutely excluded; (3) it does not, in our opinion, even prohibit such acts when the indigents are within the family ties of legal support; (4) it refers only to a limited class of persons, indigents, i. e., persons who at the time of entry into the State are destitute of property or resources, of their own, or of responsible relatives, or provided by friends, with which to support themselves and families, and dependent, therefore, on public aid.

Certainly, no distinction can be made between such "indigent person" and the "pauper" referred to by the Court.

We do not propose to enter upon any lengthy analysis of the development of the interpretation of the commerce clause by this court with respect to its negative implications pertaining to state action; or with respect to whether the commerce clause is exclusive of, or concurrent with, state action and, if concurrent, in what particular classifications of legislation; or with respect to whether state legislation is to be judged according to its purpose or its effect, or both.

We merely invite the attention of the Court to the line of cases in this Court which, we believe, state the principle applicable to the pending case, commenting more particularly upon several cases deemed important because of the close fact analogy or because of the recentness of the statement of the rule concerning the permissible field of state action.

The line of cases, holding that the several states have the power, in the absence of federal action and notwithstanding possible effect on interstate commerce, to pass local quarantine, and other regulatory laws, applicable to merchandise, carriers or persons moving in interstate commerce, as a means of protecting the local health, safety and welfare, includes cases like the following:

Morgan's S.S. Co. v. Louisiana Board of Health, 118 U. S. 455 (1886),

upholding, in the absence of federal action, state statute requiring fee of vessels entering ports pursuant to state quarantine system.

Compaigne Francais v. Louisiana Board of Health, 186 U. S. 380 (1902),

upholding, in the absence of federal action, state statute authorizing exclusion of all persons, healthy or not, from a state locality of contagion, irrespective of interstate movement of persons.

Eicholz v. Public Service Commission, 306 U. S. 268 (1938),

upholding, in the absence of federal action, rule requiring an interstate carrier to accept no intrastate business without intrastate license, on ground state could protect its legitimate interests though interstate commerce directly affected.

Willson v. Blackbird Creek Marsh Co., 2 Peters 244, 250 (1829),

upholding, in the absence of federal action, state statute authorizing damming of navigable interstate inlet where designed to eliminate marsh menace to health of inhabitants of state.

Plumley v. Massachusetts, 155 U.S. 461 (1894), upholding, in absence of federal action, state statute prohibiting sale of artificially colored oleomargarine upon ground of protection of public from deception and upon same principle empowering state to exclude paupers. (See Supp. Ex. 12, p. 147.)

Whitefield v. Ohio, 297 U.S. 431, 439 (1936), upholding state statute prohibiting the sale of convict-made goods apparently on ground that state could protect itself against an economic evil, regardless of the Act of Congress lifting the bar of the original package rule in such case.

One of the most interesting of this line of cases is *Bradley v. Public Utilities Comm. of Ohio*, 289 U.S. 92, 95, 96 (1932), in which this Court upheld the denial by the Ohio Commission of a certificate to an interstate motor carrier for use of a state highway, where the denial was upon the ground that the particular highway was already so badly congested by established motor vehicles that the proposed service would create a hazard to the safety of the public upon the highways. The court said:

> "Protection against accidents, as against crime, presents ordinarily a local problem. Regulation to ensure safety is an exercise of the police power. It is primarily a state function, whether the *locus* be private property or the public highways. Congress has not dealt with the subject. Hence, even where the motor cars are used exclusively in interstate commerce, a State may freely exact registration of the vehicle and an operator's license, *Hendrick v. Maryland*, 235 U.S. 610, 622; *Clark v. Poor*, 274 U.S. 554,

557; *Sprout v. South Bend*, 277 U.S. 163, 169; may require the appointment of an agent upon whom process can be served in an action arising out of operation of the vehicle within the State, *Kane v. New Jersey*, 242 U.S. 160; *Hess v. Pawloski*, 274 U.S. 352, 356; and may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. *Continental Baking Co. v. Woodring*, 286 U.S. 352, 365-366. Compare *Packard v. Banton*, 264 U.S. 140; *Sprout v. South Bend*, 277 U.S. 163, 171-172; *Hodge Co. v. Cincinnati*, 284 U.S. 335, 337. The State may exclude from the public highways vehicles engaged exclusively in interstate commerce, if of a size deemed dangerous to the public safety, *Morris v. Duby*, 274 U.S. 135, 144; *Sproles v. Binford*, 286 U.S. 374, 389-390. Safety may require that no additional vehicle be admitted to the highway. The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety. Compare *Hammond v. Schappi Bus Line*, 275 U.S. 164, 170-171."

So, in the pending case, it may be said that section 2615 of the Code is obviously based upon the legislative determination that the relief "highways" of the state are already so badly congested that acts of persons producing a further influx of destitute persons, i.e., over and above the normal immigration of the indigents themselves, will create a hazard to the health, safety and welfare of the established inhabitants of the state.

The most recent of this line of cases is *California v. Thompson*, 61 Sup. Ct. 930, April 28, 1941, in which the

court considered a California statute requiring every transportation agent to procure a license from the State Railroad Commission, pay a license fee therefor, and file a bond for the faithful performance of transportation contracts.

The Court, holding that the statute was not a revenue measure but a valid police measure, and overruling *Di Santo v. Pennsylvania*, 273 U.S. 34, said:

> "As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. * * *
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> "The present case is not one of prohibiting interstate commerce or licensing it on conditions which restrict or obstruct it. Cf. *Crutcher v. Kentucky*, 141 U.S. 47, 11 S. Ct. 851, 35 L. Ed. 649; *Dahnke-Walker Co. v. Bondurant*, 257 U.S. 282, 42 S. Ct. 106, 66 L. Ed. 239. For here the regulation is applied to one who is not himself engaged in the transportation but who acts only as broker or intermediary in negotiating a transportation contract between the passengers and the carrier. The license required of those engaged in such business is not conditioned upon any control or restriction of the movement of the traffic interstate but only on the good character and responsibility of those engaged locally as transportation brokers.
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> "Fraudulent or unconscionable conduct of those so engaged which is injurious to their patrons, is peculiarly a subject of local concern and the appro-

priate subject of local regulation. In every practical sense regulation of such conduct is beyond the effective reach of Congressional action. Unless some measure of local control is permissible, it must go largely unregulated. In any case until Congress undertakes its regulation we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority.

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"If there is authority in the state, in the exercise of its police power, to adopt such regulations affecting interstate transportation, it must be deemed to possess the power to regulate the negotiations for such transportation where they affect matters of local concern which are in other respects within state regulatory power, and where the regulation does not infringe the national interest in maintaining the free flow of commerce and in preserving uniformity in the regulation of the commerce in matters of national concern. See *Hartford Accident & Indemnity Co. v. Illinois*, 298 U.S. 155, 56 S. Ct. 685, 80 L. Ed. 1099."

We believe that section 2615 of the Code is well within the rule established by the foregoing authorities.

1. It does not in terms exclude any indigent person, nor does it in effect exclude any indigent family.

2. It applies only to other persons, whether citizens of California or any other state, who, as volunteers and without any tie of legal support to the indigent, knowingly bring, or assist in bringing, indigent persons into the State.

3. Such act of stimulating, promoting or assisting an influx of destitute persons, over and above a normal entry

of indigents themselves, is, in itself, related to a local problem affecting the health, safety, welfare and economic resources of the state.

4. The statute, in its reference to indigent persons, contemplates only a limited class of persons, i.e., persons so destitute of means for the support of themselves and their families as to be dependent on public aid.

5. Congress has not acted in the field of regulating the movement of such persons between states but has merely made available some funds to assist in their care after arrival, and even in this respect the aid consists merely in the permissive use by certain federal agencies of such appropriations as may be available, there being no permanent or comprehensive federal plan for the purpose. (See Supp. Ex. 8, pp. 100, 105.)

Congress has acted to exclude alien "paupers", "professional beggers", "vagrants", "persons likely to become a public charge" and "persons whose ticket or passage is paid for by the money of another, or who are assisted by others to come * * *," (USCA, Tit. 8, Sec. 3) but has not provided any similar legislation for interstate migration.

(d) Section 2615 of the Code Does Not Contravene the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution.

It is first necessary to bear in mind the true meaning of the constitutional provision: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

In the *Slaughter-house Cases,* 83 U.S. 36, 75 (1872) the Court, reviewing the various constitutional provisions claimed to be contravened by the Louisiana slaughter-house monopoly statute there involved, refers to Art. IV, Sec. 2 of the Constitution and holds that it was intended to be the same as Article IV of the Articles of Confederation.

The Court said:

> "There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the article of Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase."

Article IV of the Articles of Confederation was substantially the same as the present constitutional provision except that it contained a specific clause to the effect that "• • • the people of each state shall have ingress and regress to and from any other state • • •."

But, the Articles of Confederation *expressly excepted "paupers, vagabonds and fugitives from justice"* from those inhabitants of each state entitled to all privileges and immunities of the citizens of the several states.

That Article IV, Section 2 of the Constitution was drawn with reference to the corresponding clause of the Articles of Confederation and was intended to perpetuate the limitations of the former is declared to be settled law in *United States v. Wheeler,* 254 U.S. 281, 296 (1920).

In the words of Pinckney, who was a signer of the Constitution, Article IV, Section 2 of the Constitution was "formed exactly upon the principles of the fourth article of the present confederation."

Farrand, Records of the Federal Convention (1911) Vol. I-III, p. 112, 445.

It is clear, therefore, that any fundamental privilege and immunity of ingress and regress to the states, implied in Art. IV, Sec. 2 of the Constitution, must be read in the light of the implied exception with respect to "paupers, vagabonds and fugitives from justice."

This construction of the constitutional provision is of the utmost importance and must have been deliberately planned by the framers because, otherwise, the then long established custom, and the present general policy, of the several states, to set up residence or settlement restrictions in their poor laws and relief statutes would be of questionable validity.

These residence or settlement provisions invariably restrict state aid and relief of indigents, the unemployed, the aged and the incapacitated, to residents of the state and discriminate against transient or recently arrived citizens of other states.

If it be held that under Article IV, Section 2 of the Constitution, states may not control ingress into the state of paupers (i.e., persons so destitute of means of support as to be dependent on public aid), who enter the state as citizens of other states, then, logically and for the same reason, the state could not withhold from such class of persons, solely on the ground of non-residence, those rights

and privileges of public aid and relief which the state deems proper to extend to its own citizens.

This would, indeed, be a most amazing result, a result contrary to the practice of the states and the views of state courts upon the subject.

In *People v. Lyons*, 30 N.E. (2nd) 46, 51 (1940), the Supreme Court of Illinois considered the contention of a relief applicant that the residence condition, with which he had not complied, was a denial of due process and equal protection under both the State and the United States Constitution. The Court said:

> "* * * In particular, the classification of beneficiaries such as paupers, while not only permissible, but also necessary, must none the less be reasonable. In re Opinion of the Justices, supra. The judiciary will not interfere with such classification when made unless it is clearly unreasonable. *Punke v. Village of Elliott*, supra.
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> "Since there is no legal obligation upon the State, or any governmental unit, in the absence of legislative action, to support its poor, it follows, necessarily, that a large degree of discretion rests upon the State when it elects to furnish relief. The Pauper's Act has long imposed a burden upon local governments which, in recent years, has become increasingly heavy. The enactment under consideration reflects the attempt of our General Assembly to ameliorate the burden by reducing it to the care of those individuals who have resided a minimum of three years in a particular governmental unit. The manifest legislative intent is to furnish relief to residents of local communities who, by reason of unemployment or otherwise, are

destitute and in necessitous circumstances. Section 16 thus mirrors an intention to assure relief to such citizens by discouraging a steady influx of unfortunate transients from other jurisdictions settling in Illinois for the primary purpose of qualifying as future recipients of the State's benevolence. Apparently, the legislature concluded that the absence of any restrictions as to residence, or a less onerous requirement, might induce unemployed residents of and destitute persons from other States to avail themselves of the more generous provisions of our laws. In short, section 16 as amended in 1939, represents a legitimate attempt to prevent Illinois and our local governmental units from becoming a haven of the transient poor seeking the most advantageous statutory provisions granted those requiring assistance and, perhaps, thereby reducing the aid to which permanent residents of Illinois should justly have first claim. It cannot be said as a matter of law that the period of residence bears an unreasonable relation to the subject of poor relief."

There is, however, another reason why the appellant in the pending case cannot avail himself of this particular constitutional provision.

It has long been the interpretation of Article IV, Section 2, that it does not create the rights which it calls "privileges and immunities", nor does it profess to control the power of the state governments over the rights of their own citizens.

In the *Slaughter-House cases*, supra, at p. 77, the Court, speaking of Article IV, Section 2, said:

"Its sole purpose was to declare to the several States, that whatever those rights, as you grant or

establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

In *Estate of Johnson*, 139 Cal. 532, 535-6, (1903) the Supreme Court of California, holding valid, despite claim of invalidity under this article, an exemption from state inheritance tax of "nephews and nieces when residents of the state", followed the decisions of the United States Supreme Court to the effect that this article does not operate to strike down a state statute but operates merely to extend the privileges and immunities of the statute to citizens of other states notwithstanding the limitations of the statute.

Therefore, even if Article IV, Section 2, applied to paupers and indigent persons dependent on public aid, and even if section 2615 could be held to deprive non-citizen indigent persons of a right of ingress accorded to citizen indigent persons, the statute would not be for that reason void. The only result would be that the non-citizen indigent, i.e., Duncan in the pending case, could assert his right to ingress to the state in a proper case, if he was being in fact deprived of such privilege.

Edwards, the appellant in the pending case, however, is not a citizen of another state, but a citizen of California; he has not been deprived of ingress for indigency or any other reason. He is not, therefore, of the class of persons that might be injured by this statute, at least as far as the privileges and immunities clauses of Article IV, Section 2, or of the Fourteenth Amendment are concerned.

and cannot raise the question of its invalidity under those provisions.

Red River Valley Co. v. Craig, 181 U.S. 548, 558;
Estate of Johnson, supra p. 534.

(e) Section 2615 of the Code Does Not Contravene the Privileges and Immunities Clause of the Fourteenth Amendment.

This provision of the Constitution to the effect that "no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States" has long been limited, and most recently by *Madden v. Kentucky,* 309 U.S. 83, 90 (1939), overruling *Colgate v. Harvey,* 296 U.S. 404 (1935), to the protection of rights peculiar to national citizenship, as distinct from the fundamental or natural rights inherent in State citizenship.

See also:

Hague v. CIO, 307 U.S. 496, 519-20 (Justice Stone);
Conf. p. 512 (Justice Roberts).

The right of persons to move across state boundaries is not referable to the privileges and immunities clause of the Fourteenth Amendment.

In *Colgate v. Harvey,* 296 U.S. 404, 443-444 (dissenting opinion of then Justice Stone), the dissenting justice pointed out that *Crandall v. Nevada,* 6 Wall. 35, (which was noted in *Twining v. New Jersey,* 211 U.S. 78, 97 (1908)) has been overruled by *Helson v. Kentucky,* 279 U.S. 245, 251 (1929) in so far as it referred the subject of interstate movement to the privileges and immunities clause rather than to the commerce clause.

Moreover, even if the privileges and immunities clause of the Fourteenth Amendment covers the right of ingress and egress between states, it does not, when read in the light of the exception implied in Article IV, Section 2, in respect to paupers and in the light of the reiterated pronouncements of the Supreme Court with respect to paupers, apply to ingress and egress of paupers, persons so destitute as to be dependent on public aid.

Lastly, as we have heretofore pointed out in our comment upon the privileges and immunities clause of Article IV, Section 2, appellant in the pending case is in no position to assert the invalidity of section 2615 of the Code under these particular constitutional provisions because he has not been deprived of any privilege or immunity thereby secured, even if it be assumed that an indigent resident of another state could rely upon them in a proper case.

CONCLUSION.

We trust that this brief, and the separate supplement filed herewith, will be helpful to the Court in its determination of the important constitutional questions here involved.

Our main purpose has been to assist the Court by providing the background necessary for an understanding of the policy and purpose of the State of California concerning the subject to which section 2615 of the Code relates.

We feel that this Court will be in a better position to approach the question without resort to appellant's hasty imputation to California of the hard and selfish purpose

of preventing "the common man from exercising the rights which may be exercised by one whose sole distinction rests in the number of dollars he possesses."

Rather, let it be said that the State policy of California concerning a serious problem and the very limited purpose of the State in the enactment of section 2615 of the Code are not only consistent with, but proof of, the fact that California's only purpose has been to restrain its characteristic generosity and friendliness by practical solicitude for the welfare of its own citizens and those of sister states.

It is possible that future Congressional action or further State consideration may solve this problem in a more idealistic manner.

Until then, however, all things considered and section 2615 of the Code understood in the light of its true purpose and actual effect, there is, we most respectfully submit, no constitutional ground upon which the Court should strike this law from the statute books of California.

Dated, San Francisco, California,
October 10, 1941.

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